the results of a statistically valid number of such simulations, Equitable was able to determine actuarially the level cost of providing the benefit. Based on this analysis, Equitable determined that the 0.35% charge was a reasonable charge for providing the guaranteed minimum death benefit under the Certificates. Equitable undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in making that determination.

15. Applicants represent that the aggregate mortality and expense risk and guaranteed minimum death benefit charges under the Certificates are reasonable in relation to the risks by Equitable under the Certificates, and reasonable in amount as determined by industry practice for comparable contracts. Applicants represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk and guaranteed minimum death benefit charges under comparable variable annuity contracts currently being offered in the insurance industry, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of charge level or annuity rate guarantees, and the markets in which the Certificate will be offered. Applicants will maintain and make available to the Commission upon request a memorandum outlining the methodology underlying the foregoing representations.

16. Equitable will assess a mortality and expense risk charge not to exceed an annual rate of 0.90%, and a maximum annual charge of 0.35% of the guaranteed minimum death benefit. Assuming a hypothetical gross investment return in the Account of 5.0%, the 0.35% maximum guaranteed minimum death benefit charge would, if expressed as a daily charge against Account assets, add approximately 0.35% to the 0.90% mortality and expense risk charge, for a total charge, on an annual basis, of approximately 1.25% of the assets in the Investment Funds.

17. For higher hypothetical gross returns, the guaranteed minimum death benefit charge, when expressed as an asset-based charge, would be less; for lower hypothetical gross returns, it would be more. Applicants assert that this is because the charge base—which is essentially contributions plus interest—is a relative constant in dollar amount compared to the fluctuating values of an Investment Fund. Thus, as a percentage of the assets of an Investment Fund, which (assets) change with investment performance, positive performance results in a reduction of the guaranteed minimum death benefit charge when expressed as an asset-based charge; negative performance will result in an increase in the guaranteed minimum death charge when expressed as an asset-based charge.

18. Applicants acknowledge that the withdrawal charge and distribution fee, as applicable, may be insufficient to cover all costs relating to the distribution of the Certificates. Applicants further acknowledge that if a profit is realized from the mortality and expense risk and guaranteed minimum death benefit charges, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge and distribution fee. In such circumstances, a portion of such charges might be viewed as providing for costs relating to distribution of the Certificates.

19. Notwithstanding the foregoing, Equitable has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Certificates will benefit the Account and Certificate owners and annuitants. Equitable represents that it will maintain at its principal office, and make available on request to the Commission, a memorandum setting forth the basis for such conclusion.

20. Equitable represents that the Account will invest only in an underlying mutual fund which has undertaken to have a board of directors, a majority of the members of which are not ''interested persons'' of such fund within the meaning of Section 2(a)(19) of the Act, formulate and approve any plan to finance distribution expenses in accordance with Rule 12b–1 under the 1940 Act.

## Conclusion

Applicants submit that for the reasons and based upon the facts set forth above, the requested exemptions from Sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the assessment of a mortality and expense risk charge, a guaranteed minimum death benefit charge, and a distribution fee under the Account Contracts and Other Contracts meet the statutory standards of Section 6(c) of the 1940 Act. Accordingly, Applicants assert that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–5335 Filed 3–3–95; 8:45 am]

**BILLING CODE 8010–01–M**

**[Rel. No. IC–20922; 812–8846]**

## Prudential Securities Incorporated, et al.; Notice of Application

February 27, 1995.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

**APPLICANTS:** Prudential Securities Incorporated (the ''Sponsor''); and National Municipal Trust, Prudential Unit Trusts, National Equity Trust, and Government Securities Equity Trust (the ''Trusts'').

**RELEVANT ACT SECTIONS:** Order requested pursuant to section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 22(c), 22(d), and 26(a)(2)(C) of the Act and rule 22c–1 thereunder, and pursuant to section 11(a) to amend a prior order (the ''Prior Order'') granting relief from section 11(c).[1]

**SUMMARY OF APPLICATION:** Applicants seek to impose sales charges on a deferred basis and waive the deferred sales charge in certain cases, exchange Trust units having deferred sales charges, and exchange units of a terminating series of a Trust for units of the next available series of that Trust.

**FILING DATES:** The application was filed on February 22, 1994 and amended on July 21, 1994, January 19, 1995, and February 21, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 24, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request

[1] Prudential-Bache Securities, Inc., Investment Company Act Release Nos. 14943 (Feb. 18, 1986) (notice) and 14989 (March 13, 1986) (order).

notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 32 Old Slip, New York, New York 10292.

**FOR FURTHER INFORMATION CONTACT:** Fran Pollack-Matz, Senior Attorney, at (202 942–0570 or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

**Applicant's Representations**

1. Each of the Trusts is a unit investment trust sponsored by the Sponsor. The Trusts are made up of one or more separate series (''Series''). Over four hundred Series of the Trusts are currently outstanding.

2. Each Series is created by a trust indenture among the Sponsor, a banking institution or trust company as trustee, and an evaluator. The Sponsor acquires a portfolio of securities and deposits them with a trustee in exchange for certificates representing fractional undivided interests in the portfolio of securities (''Units''). Units currently are offered to the public through the Sponsor and other underwriters and dealers at a price based upon the aggregate offering side evaluation of the underlying securities plus an up-front sales charge. The sales charge currently ranges from 2.00% to 5.50% of the public offering price. The Sponsor may offer a discounted sales charge to unitholders within a Series based on the quantity of Units purchased. The sales charge may also vary among Series depending on the terms of the underlying securities.

3. Applicants seek an order under section 6(c) exempting them from sections 2(a)(32), 2(a)(35), 22(c), 22(d), and 26(a)(2)(C) and rule 22c–1 thereunder to let them impose sales charges on Units on a deferred basis and waive the deferred sales charge in certain cases. Under applicants' proposal, the Sponsor will continue to determine the amount of sales charge per Unit at the time portfolio securities are deposited in a Series. The Sponsor will have the discretion to defer collection of all or part of this sales charge over a period (''Collection Period'') following the settlement date for the purchase of Units. The Sponsor will in no event add to the deferred amount initially determined any additional amount for interest or any similar or related charge to reflect or adjust for such deferral.

4. The deferred sales charge (''DSC'') may be (a) deducted from the proceeds of a sale, exchange, or redemption of units or termination of the Series; or (b) deducted from (i) amounts received on the sale of portfolio securities, (ii) amounts received on the maturity of portfolio securities, (iii) income distributions on the Units, or (iv) a combination thereof (''Distribution Deductions''). Alternatively, the trustee may advance the DSC on behalf of the Series on a periodic basis, in which case the trustee will be reimbursed from the income or principal account of the Series upon the receipt of proceeds from the maturity or sale of portfolio securities, until the total amount per unit is collected. The total of all these amounts will not exceed the aggregate DSC per unit.

5. For purposes of calculating the amount of the deferred sales charge due upon redemption or sale of Units, it will be assumed that Units on which the balance of the sales charge has been collected from installment payments are liquidated first. Any Units disposed of over such amounts will be redeemed in the order of their purchase, so that Units held for the longest time are redeemed first.

6. The Sponsor may adopt a procedure of waiving the DSC payable out of net sales, exchange, or redemption proceeds, if necessary, so as not to jeopardize the tax-exempt nature of various investors such as Individual Retirement Accounts and employee benefits plans, if otherwise required for tax purposes, or for such other reasons as disclosed in the prospectus.

7. The date and amount of each DSC accrual or payment will be disclosed in the prospectus. The prospectus for a Series will disclose that portfolio securities may be sold to pay the DSC if amounts in the income account are insufficient to pay the DSC or proceeds from portfolio securities are intended to pay the DSC. The confirmation received by a holder on the purchase, sale, exchange, or redemption of a Unit will indicate the DSC to the extent required by National Association of Securities Dealers, Inc. rules. The account statement of a holder will reflect a value for a Unit. The account statement, however, will not reflect the amount a holder paid for the up-front sales charge. At the end of every year, the Series' annual report will reflect the aggregate amount of any Distribution Deductions taken, both on a Series and per Unit basis.

8. Units received in an exchange are subject to a fixed dollar sales charge of $15, $20, or $25 per $1000 of Units for (a) Units trading in the secondary market, (b) Units trading in the secondary market received upon the exchange of units of a trust not solely sponsored by the Sponsor, and (c) Units received during such Series' initial offering period, respectively. When Units held for less than five months are exchanged for Units with a higher regular sales charge, the sales charge will be the greater of (a) the reduced sales charge or (b) the difference between the sales charge paid in acquiring the Units being exchanged and the regular sales charge for the quantity of Units being acquired, determined as of the date of the exchange.

9. Applicants seek to amend the Prior Order to permit offers of exchange of Units subject to a DSC. If a Unit subject to a DSC is being exchanged, the proceeds due to the exchanging investor will be net of the DSC due upon the sale of a Unit at such time. Units acquired in the exchange will be subject to the greater of a sales load of a fixed dollar amount (currently ranging from $15 to $25 depending on whether the Series being acquired is in the initial offering period or the secondary market) or the amount of the DSC remaining on the Units being acquired.

10. The Sponsor may offer certain Series that have intermediate or short-term stated maturities. Upon termination of such Series, the Sponsor may create a new Series with the same investment objective, the same type of portfolio securities as the terminating Series, and in certain instances some of the same portfolio securities. Applicants wish to make Units of the new Series available to the unitholders of the terminating Series at the net asset value of the new Units plus a reduced sales charge on an up-front and/or deferred basis (the ''Rollover Option''). Although applicants believe that the Prior Order already permits the Rollover Option, they request that the Prior Order be amended to cover the Rollover Option explicitly.

**Applicants' Legal Analysis**

1. Under section 6(c), the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 2(a)(32) defines a ''redeemable security'' as a security that, upon its presentation to the issuer, entitles the holder to receive

approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent of those assets.[2]

3. Section 2(a)(35) defines the term ''sales load'' to be the difference between the sales price and the proceeds to the issuer, less any expenses not properly chargeable to sales or promotional expenses. Because a DSC is not charged at the time of purchase, an exemption from section 2(a)(35) is necessary.

4. Section 22(c) and rule 22c–1 require that the price of a redeemable security issued by an investment company for purposes of sale, redemption, and repurchase be based on the investment company's current net asset value. Because the imposition of a DSC may cause a redeeming unit holder to receive an amount less than the net asset value of the redeemed Units, applicants seek an exemption from this section and rule.

5. Section 22(d) requires an investment company and its principal underwriter and dealer to sell securities only at a current public offering price described in the investment company's prospectus. Because sales charges traditionally have been a component of the public offering price, section 22(d) historically required that all investors be charged the same load. Rule 22d-1 was adopted to permit the sale of redeemable securities ''at prices that reflect scheduled variations in, or elimination of, the sales load.'' Because rule 22d–1 may not be interpreted as extending to scheduled variations in deferred sales charges, applicants seek relief from section 22(d) to permit each Series to waive or reduce the DSC in certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d–1 under the Act.

6. Section 26(a)(2) in relevant part prohibits a trustee or custodian of a unit investment trust from collecting from the trust as an expense any payment to a depositor or principal underwriter thereof. Because of this prohibition, applicants need an exemption to permit the trustee to collect the DSC installments from distribution deductions or Trust assets.

7. Applicants believe that implementation of the DSC program in the manner described above would be fair and in the best interests of the unitholders of the Trusts. Thus, granting the requested order would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

8. Section 11(c) prohibits any offers of exchange of the securities of a registered unit investment trust for the securities of any other investment company, unless the terms of the offer have been approved by the SEC. Applicants assert that the reduced sales charge imposed at the time of exchange is a reasonable and justifiable expense to be allocated for the professional assistance and operational expenses incurred in connection with the exchange.

### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Whenever the exchange option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) no such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the exchange option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of units of the Trust under section 22(e) and the rules and regulations promulgated thereunder, or (ii) a Trust temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies, and restrictions.

2. The amount of the sales charge per Unit collected from a holder at the time of any exchange or conversion of a Unit will be lower than the sales charge collected on the initial purchase of the same Unit at such time.

3. The prospectus of each Trust offering exchanges and any sales literature or advertising that mentions the existence of the exchange option will disclose that the exchange option is subject to modification, termination, or suspension, without notice except in certain limited cases.

4. Each Series offering Units subject to a deferred sales charge will include in its prospectus the table required by item 2 of Form N–1A (modified as appropriate to reflect the differences between unit investment trusts and open-end management investment companies) and a schedule setting forth the number and date of each installment payment.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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BILLING CODE 8010–01–M

[2] Without an exemption, a trust selling unit subject to a deferred sales charge could not meet the definition of a unit investment trust under section 4(2) of the Act. Section 4(2) defines a unit investment trust as an investment company that issues only ''redeemable securities.''

## SMALL BUSINESS ADMINISTRATION

### Preferred Lenders Program; FA$TRAK Pilot Program

**AGENCY:** Small Business Administration.

**ACTION:** Notice of pilot program ''FA$TRAK''.

**SUMMARY:** the Small Business Administration (SBA) is establishing a pilot program in which certain lenders will be permitted to use their own documentation and procedures to approve loans to small businesses using the Section 7(a) loan program in return for a reduced percentage of guaranty and other modifications to SBA's normal lending practices. This program will be called FA$TRAK and will be considered a part of the Preferred Lenders Program.

**DATES:** This pilot will be effective on February 27, 1995 and will remain in effect for 2 years.

**FOR FURTHER INFORMATION CONTACT:** James W. Hammersley, Deputy Director, Office of Financing, U.S. Small Business Administration, 8th floor, 409 3rd St., SW., Washington, DC 20416; 202–205–6493.

**SUPPLEMENTARY INFORMATION:** The Small Business Administration (SBA) is establishing the FA$TRAK pilot program as part of the existing Preferred Lenders Program. This program is designed to streamline the process by which a lender receives a guaranty from SBA on a loan made to a qualifying small business. It is SBA's goal to utilize, to the maximum extent possible, existing documentation of participating lenders. Therefore, for FA$TRAK loans lenders will be permitted to use their own application form(s), internal credit memoranda, notes, collateral documents, servicing documentation and liquidation documentation. The SBA will limit the use of government-mandated forms to those forms necessary to authorize the lender to disburse the loan with a government guaranty, record the guaranteed balance and loan status, and ensure that the borrower has agreed to those items required by law and regulation.